

73 FLRA No. 14

INDEPENDENT UNION
OF PENSION EMPLOYEES FOR
DEMOCRACY AND JUSTICE
(Union)

and

PENSION BENEFIT
GUARANTY CORPORATION
(Agency)

0-AR-5792

ORDER DISMISSING EXCEPTIONS

June 14, 2022

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and Susan Tsui Grundmann,
Members

I. Statement of the Case

The Union filed two sets of exceptions to Arbitrator C. Allen Foster's award. Because the Union fails to make any arguments about the award, the Union's exceptions do not raise a ground for review. Accordingly, we dismiss the exceptions.

II. Background

The Arbitrator served the award on the parties by email on December 14, 2021. The Union filed an exceptions form (initial exceptions) using the Federal Labor Relations Authority's (FLRA's) eFiling system on January 14, 2022, at 12:00 a.m. The Union successfully uploaded a copy of the award but did not make any arguments within the exceptions form or attach an exceptions brief.¹ Seven minutes later, at 12:07 a.m., the Union filed a second exceptions form (second exceptions) using the FLRA's eFiling system and successfully uploaded several exhibits. However, the Union once again did not make any arguments within the form or attach an exceptions brief.² Later that same day, the Union faxed a motion to the FLRA to "strike the initial [exceptions]" and "accept the second [exceptions] ... as timely."³

On March 14, 2022, the Agency filed an opposition.

III. Analysis and Conclusion: The Union's exceptions do not set forth a ground for review under the Authority's Regulations.

Under § 2425.4 of the Authority's Regulations, an excepting party must ensure its exceptions are "self-contained," and that it provides "[a] statement of the grounds on which review is requested."⁴ Exceptions "may be subject to dismissal ... if ... [t]he excepting party fails to raise" recognized grounds for review listed in § 2425.6(a)-(c) or "otherwise fails to demonstrate a legally recognized basis for setting aside the award."⁵

As neither of the Union's filings provide the Authority a statement of the grounds on which review is requested, there is no basis for reviewing the award.⁶ Consequently, we dismiss the exceptions.⁷

¹ In the Union's first electronic exceptions form, the section where the Union could upload a brief said, "Empty but *[*r]equired." Exceptions Form (Initial Exceptions Form) at 2.

² In the Union's second electronic exceptions form, the section where the Union could upload a brief said, "Empty but *[*r]equired." Exceptions Form (Second Exceptions Form) at 2.

³ Union Mot. to Strike at 2.

⁴ 5 C.F.R. § 2425.4(a)(1); *see id.* § 2425.6(a)-(c) (detailing the grounds under which the Authority will review arbitration awards).

⁵ *Id.* § 2425.6(e)(1); *see AFGE, Loc. 446*, 72 FLRA 54, 55 n.21 (2021) (*Loc. 446*) (Chairman Kiko concurring).

⁶ *See Loc. 446*, 72 FLRA at 54-55 (dismissing exceptions that "[d]id not articulate any grounds currently recognized for review" where excepting party attached only its post-hearing brief and did not make any arguments); *AFGE, Loc. 3955, Council of Prison Locs. 33*, 65 FLRA 887, 889 (2011) (Member Beck dissenting in part) (dismissing exceptions because the excepting party failed to raise grounds recognized for

review by the Authority and did not cite any legal authority to support a ground currently not recognized by the Authority).

⁷ On February 9, 2022, the Agency requested leave to file, and did file, two motions: (1) a motion to stay Authority proceedings or extend the opposition deadline and (2) a motion to dismiss the Union's exceptions as untimely. The Union requested leave to file, and did file, a response to the Agency's motion to dismiss on February 15, 2022. On February 23, 2022, the Agency also requested leave to file, and did file, an additional motion to extend the opposition deadline. As we are dismissing the Union's exceptions, it is unnecessary to address any of the parties' motions. *See, e.g., U.S. Dep't of the Interior, Bureau of Indian Affs., Wapato Irrigation Project*, 65 FLRA 5, 6 n.2 (2010) (Member Beck dissenting) (finding it unnecessary to address the parties' remaining arguments when dismissing exceptions). Similarly, it is unnecessary to address whether the Union's procedurally deficient exceptions were timely. *Cf. AFGE, Nat'l Joint Council of Food Inspection Locs.*, 64 FLRA 1116, 1118 n.2 (2010) (after dismissing an exception under one subpart

IV. Decision

We dismiss the Union's exceptions.

of the Authority's Regulations, finding it unnecessary to address whether the exception was also deficient under another subpart of the Authority's Regulations); *AFGE, Loc. 131*, 60 FLRA 999,

999 n.* (2005) (finding it unnecessary to reach the question of whether the opposition was timely filed because the excepting party failed to establish that the award was deficient).